SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1981
No. 80-1806

----------x

DAVID R. HARRIS, Superintendent,
Greenhaven Correctional Facility,
ROBERT J. HENDERSON, Superintendent,
Auburn Correctional Facility,

Petitioners,

-against-

FERNANDO BERMUDEZ, JOSE LAUREANO
and JOSE BONILLA,

Respondents.

----------x

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The respondent, FERNANDO BERMUDEZ, hereby moves this Honorable Court pursuant to Rule 53 for an order permitting him to file his Response to the Petition for a Writ of Certiorari and otherwise proceed in the Court in forma pauperis.

In support of this motion, Respondent relies upon his annexed affidavit, sworn on June , 1981.

Dated: New York, New York
June , 1981

FERNANDO BERMUDEZ
Pro Se
c/o CAROCCIO
224 E. 28th Street
New York, N.Y. 10016
Apt. 20H
226-5123

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PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

The respondent FERNANDO BERMUDEZ, pro se most respectfully requests this Court to consider the arguments advanced in the briefs in opposition to the Petition for a Writ of Certiorari asserted by co-respondents JOSE LAUREANO and JOSE BONILLA and joins in their arguments and hereby requests this Court to consider those arguments his arguments without the necessity of further legal citations or independent brief.

Respectfully submitted,

FERNANDO BERMUDEZ Pro Se
c/o Caroccio
224 E. 28th Street
New York, New York 10016
Apr 20H
226-5123

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AFFIDAVIT IN SUPPORT OF MOTION OF FERNANDO BERMUDEZ TO PROCEED IN THE SUPREME COURT OF THE UNITED STATES IN FORMA PAUPERIS

I, FERNANDO BERMUDEZ, being first duly sworn, on oath, depose and say that I am a respondent in the above-entitled cause; that in support of my motion to proceed in opposition to the petition for a writ of certiorari and any further proceedings in this Court without being required to pay fees or to submit printed briefs, I state that because of my poverty I am unable to pay costs of said proceeding or give security therefor; that I believe I am entitled to redress; and that the position which I desire to present in opposition to the petition for a writ of certiorari is the following: Certiorari should not be granted to review the Order of the United States Court of Appeals for the Second Circuit upon remand for consideration in light of Cuyler v. Sullivan, 446 U.S. 335 (1980), Harris v. Bermudez, 446 U.S.

962 (1980). Said Order of the Court of Appeals for the Second Circuit affirmed the District Court's decision and held that such decision complied with the standard articulated by this Court in Cuyler, supra, for determining Sixth Amendment cases in which an assertion is made by a criminal defendant that he was deprived of effective assistance of counsel arising from multiple representation.

The Order of the Court of Appeals for the Second Circuit is not in conflict with the decision of any other Court of Appeals.

I further swear that the response which I have made to the questions and instructions below, relating to my ability to pay the costs of responding to the Petition for a Writ of Certiorari or the costs of any further or other proceedings in this Court are true.

1. Are you presently employed? If yes, where are your working? B+J IRON WORKS

When do you begin working? August 1980

What is your weekly salary? $194 net

2. Have you received within the past 12 months any income from business, profession or other form of self-employment, or in the form of rent payments, interests, dividents or other source? NO

3. Do you own any cash or checking or savings account? NO

4. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property, excluding ordinary household furnishings and clothing? 1970 Plymouth given to me as a gift from my brother Nelson Bermudez.

5. List the persons who are dependent upon you for the support and state your relationship to those persons.

Virginia Bermudez, wife, Tammy Bermudez, daughter and Vincent Salamony, step-son

6. Gilbert Epstein, Esq. has represented me in this matter since its inception but is presently a public servant being employed in the office of the Attorney General of the State of New York, and cannot represent me in this matter nor can I afford the services of a private attorney. It would be impossible for me to secure other representation at this time.

7. I understand that a false statement or answer to any question in this affidavit will subject me to penalties of perjury.

Fernando L. Bermudez

FERNANDO BERMUDEZ

Subscribed and sworn to before me this 2nd day of June, 1981.

Joel M. Lutwin

NOTARY PUBLIC

JOEL M. LUTWIN
Notary Public, State of New York
No. 31-4701486
Qualified in New York County
Commission Expires March 30, 1983